

## UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

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RENEE BROWN,

Case No. 2:24-cv-00213-MMD-BNW

Plaintiff,

ORDER

v.

WALMART,

Defendant.

**I. SUMMARY**

Plaintiff Renee Brown filed a personal injury action in state court against Defendant Walmart for a slip-and-fall accident that occurred on the premises of one of Walmart's stores. (ECF No. 1-1.) Defendant removed the action to this Court. (ECF No. 1.) Before the Court is Plaintiff's motion to remand to state court (ECF No. 6).<sup>1</sup> As explained below, because Defendant's removal is untimely under the one-year time limitation set forth in 28 U.S.C. § 1446(c)(1) and Plaintiff did not act in bad faith to prevent removal, the Court will grant the motion to remand.

**II. BACKGROUND**

In July 2020, Plaintiff slipped and fell on a puddle of water near an ice fridge in a Walmart store in Las Vegas, Nevada and sustained injuries. (ECF No. 1-1 at 3-4.) On June 27, 2022, Plaintiff filed this action against Walmart and Doe defendants in the Eighth Judicial District Court of Clark County, Nevada. (*Id.* at 1.) Plaintiff brought claims for "negligence - premises liability" and "negligent hiring, training, retention and supervision," seeking general damages "in excess of \$15,000" and special damages for Plaintiff's incurred and future medical expenses "in excess of \$15,000." (*Id.* at 5-9.) Walmart was

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<sup>1</sup>Defendant responded (ECF No. 7), and Plaintiff replied (ECF No. 8).

1 alleged to be “a foreign corporation, organized and existing [under] the laws of the State  
2 of Delaware.” (*Id.* at 1-2.)

3 On August 31, 2022, Plaintiff filed a first amended complaint, naming Susan  
4 Manterola and Jeremiah Wood as defendants who were allegedly managers on-duty at  
5 the time of the slip-and-fall incident. (ECF No. 6-2 at 2-3.) Manterola and Wood were  
6 alleged to be citizens of Nevada. (*Id.* at 3.)

7 On November 1, 2022, Plaintiff filed a request for exemption from arbitration,  
8 alleging damages for incurred medical expenses and estimated future medical expenses  
9 in the total amount of \$371,822.79. (ECF No. 1 at 2; ECF No. 1-3 at 3-4.)

10 On May 12, 2023, the state court granted a stipulation dismissing with prejudice  
11 the claims against Wood. (ECF No. 1-5.) On December 19, 2023, Manterola filed a motion  
12 to dismiss all claims against her under Nevada Rules of Civil Procedure (“NRCP”)   
13 12(b)(5). (ECF No. 1-6.) On January 22, 2024, the state court issued a minute order  
14 granting Manterola’s motion to dismiss as unopposed. (ECF No. 1-7.)

15 On January 30, 2024, Defendant filed a petition for removal to this Court. (ECF No.  
16 1.) Plaintiff subsequently filed a motion to remand to state court on February 22, 2024.  
17 (ECF No. 6.)

### 18 **III. DISCUSSION**

19 Federal courts are courts of limited jurisdiction, having subject-matter jurisdiction  
20 only over matters authorized by the Constitution and Congress. See U.S. Const. art. III,  
21 § 2, cl. 1; e.g., *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A  
22 suit filed in state court may be removed by the defendant to federal court if the federal  
23 court would have had original jurisdiction over the suit. See 28 U.S.C. § 1441(a).  
24 However, courts “strictly construe the removal statute against removal jurisdiction,” and  
25 “[f]ederal jurisdiction must be rejected if there is any doubt as to the right of removal in  
26 the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (citations  
27 omitted). “The ‘strong presumption’ against removal jurisdiction means that the defendant  
28 always has the burden of establishing that removal is proper.” *Id.* (citations omitted). After

1 removal, a plaintiff may move to remand the action to state court for lack of federal  
2 jurisdiction or for procedural defects. See 28 U.S.C. § 1447(c). “[A] court may remand for  
3 defects other than lack of subject matter jurisdiction only upon a timely motion to remand.”  
4 *Smith v. Mylan Inc.*, 761 F.3d 1042, 1044 (9th Cir. 2014) (citations omitted).

5 Here, Defendant removed the action under 28 U.S.C. § 1332 based on diversity  
6 jurisdiction. (ECF No. 1 at 4.) The parties do not dispute that diversity of citizenship is  
7 satisfied or that the amount in controversy exceeds \$75,000. (ECF No. 6 at 2; ECF No. 7  
8 at 3.) Plaintiff moves to remand based on untimeliness—a procedural defect—of  
9 Defendant’s removal. (ECF No. 6 at 2.) See *also Smith*, 761 F.3d at 1045 (finding the  
10 time limit requirements in the removal statute to be procedural).

11 Removal procedure of a civil action from a state to federal court is set forth in 28  
12 U.S.C. § 1446. A defendant seeking to remove a case must generally do so within 30  
13 days of service. See 28 U.S.C. § 1446(b)(1). However, “[e]xcept as provided in subsection  
14 (c), if the case stated by the initial pleadings is not removable, a notice of removal may  
15 be filed within 30 days after receipt by the defendant, through service or otherwise, of a  
16 copy of an amended pleading, motion, order or other paper from which it may first be  
17 ascertained that the case is one which is or has become removable.” 28 U.S.C. §  
18 1446(b)(3).

19 Defendant relies on 28 U.S.C. § 1446(b)(3), as it adequately demonstrated in its  
20 petition for removal that Plaintiff’s initial complaint did not put Defendant on notice that  
21 the amount in controversy was in excess of \$75,000 and thus was not initially removable.  
22 (ECF No. 1 at 3.) After it became apparent that the amount in controversy exceeded  
23 \$75,000 with Plaintiff’s filing of a request for exemption from arbitration (ECF No. 1-3) and  
24 after two added, non-diverse defendants—Manterola and Wood—were dismissed from  
25 the state court action (ECF Nos. 1-5, 1-7), Defendant filed the notice of removal on  
26 January 30, 2024 (ECF No. 1)—well within 30 days after receipt of the January 22, 2024  
27 order dismissing the final non-diverse defendant (ECF No. 1-7). Defendant contends that  
28

1 this means its removal was timely under § 1446(b)(3). (ECF No. 1 at 3-4; ECF No. 7 at 4-  
2 5.)

3 However, Plaintiff correctly points out that § 1446(b)(3) is subject to a restriction  
4 set forth in § 1446(c)(1). (ECF No. 6 at 2; ECF No. 8 at 4.) Under § 1446(c)(1), “[a] case  
5 may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by  
6 section 1332 more than one year after commencement of the action, unless the district  
7 court finds that the plaintiff has acted in bad faith in order to prevent a defendant from  
8 removing the action.” Plaintiff commenced this action in state court on June 27, 2022.  
9 (ECF No. 6-1.) Defendant filed its petition for removal on January 30, 2024, about one  
10 year and seven months afterwards (ECF No. 1), and therefore, this case may not be  
11 removed “unless [this Court] finds that [P]laintiff has acted in bad faith in order to prevent  
12 [D]efendant from removing the action,” see 28 U.S.C. § 1446(c)(1).

13 Defendant appears to argue that Plaintiff acted in bad faith to prevent removal  
14 because Plaintiff’s claims against Manterola and Wood had no basis in law or fact and  
15 thus Plaintiff’s joinder of those non-diverse defendants constituted fraudulent joinder.  
16 (ECF No. 7 at 3.) “There are two ways to establish fraudulent joinder: ‘(1) actual fraud in  
17 the pleading of jurisdictional facts, or (2) inability of the plaintiff to establish a cause of  
18 action against the non-diverse party in state court.’” *Grancare, LLC v. Thrower by &*  
19 *through Mills*, 889 F.3d 543, 548 (9th Cir. 2018) (citations omitted). “Fraudulent joinder is  
20 established the second way if a defendant shows that an ‘individual[ ] joined in the action  
21 cannot be liable on any theory.’” *Id.* (citation omitted). “But ‘if there is a *possibility* that a  
22 state court would find that the complaint states a cause of action against any of the  
23 resident defendants, the federal court must find that the joinder was proper and remand  
24 the case to the state court.’” *Id.* (emphasis in original, citation omitted). “A defendant  
25 invoking federal court diversity jurisdiction on the basis of fraudulent joinder bears a  
26 ‘heavy burden’ since there is a ‘general presumption against [finding] fraudulent joinder.’”  
27 *Id.*

1 Defendant first argues that if Manterola and Wood were employees of Defendant,  
2 they could not be liable for the acts of Defendant's employees under *respondeat superior*.  
3 (ECF No. 7 at 4.) The Court finds this to be an unpersuasive narrowing of the allegations  
4 because Plaintiff's amended complaint alleged a viable theory of direct negligence liability  
5 against Manterola and Wood, as managers allegedly on-duty and in control of the  
6 premises at the time of the slip-and-fall incident who knew about the water on the ground  
7 and failed to clean up or direct someone to clean up the water. (ECF No. 6-2 at 7.) See  
8 also *Leuenberger v. Walmart, Inc.*, Case No. 2:22-cv-01598-CDS-BNW, 2024 WL 81401,  
9 at \*2 (D. Nev. Jan. 5, 2024) (citing *Foster v. Costco Wholesale Corp.*, 291 P.3d 150 (Nev.  
10 2012)) ("When a plaintiff's negligence claim is based on premises liability, the plaintiff  
11 must prove that the defendant owned or had control of the premises, knew or should have  
12 known of a dangerous condition that could cause injury, and failed to take adequate steps  
13 to prevent such injury from occurring."). Plaintiff's amended complaint also alleged a  
14 viable claim of negligent hiring, training, retention, and supervision against Manterola and  
15 Wood in their alleged roles as managers and supervisors of other employees. (ECF No.  
16 6-2 at 9.) See also *Hall v. SSF, Inc.*, 930 P.2d 94, 96-97 (Nev. 1996) (involving a claim of  
17 negligent hiring, training, retention, and supervision against a manager of a nightclub, in  
18 addition to the owner of the nightclub).

19 "[I]n many cases, the complaint will be the most helpful guide in determining  
20 whether a defendant has been fraudulently joined," but "the party seeking removal is  
21 entitled to present additional facts that demonstrate that a defendant has been  
22 fraudulently joined." *Grancare*, 889 F.3d at 549 (citations omitted). Defendant asserts that  
23 Plaintiff's stipulation to dismiss Wood and failure to oppose Manterola's motion to dismiss  
24 demonstrate that they were only joined to defeat diversity jurisdiction. (ECF No. 7 at 4.)  
25 Defendant also argues that because these defendants were dismissed with prejudice,  
26 that forecloses any possibility that Plaintiff could establish they were liable. (*Id.*)

27 The Court rejects both of these arguments because eventual dismissal on such  
28 grounds—particularly when not expressly on the merits—does not necessarily mean that

1 there was no legal or factual possibility of liability nor that Plaintiff knew that Manterola  
 2 and Wood were not proper defendants at the time of joinder. Moreover, the inquiry here  
 3 does not depend on the fact that the state court already dismissed these claims but on  
 4 whether they were “obviously not viable according to well-settled rules of state law”—  
 5 which the Court does not find so here. See *Knutson v. Allis-Chalmers Corp.*, 358 F. Supp.  
 6 2d 983, 993-94 (D. Nev. 2005) (citing *Ritchey v. Upjohn Drug Co.*, 139 F.3d 1313, 1318  
 7 (9th Cir. 1998)). Defendant points to no other facts in its argument to demonstrate that  
 8 there was no possibility that Plaintiff could state a cause of action against Manterola and  
 9 Wood.<sup>2</sup>

10 Accordingly, Defendant has failed to meet its “heavy burden” to demonstrate  
 11 fraudulent joinder. See *Grancare*, 889 F.3d at 548. The Court therefore does not find that  
 12 Plaintiff “acted in bad faith in order to prevent [Defendant] from removing the action,” see  
 13 28 U.S.C. § 1446(c)(1), and finds that Defendant has not met its burden to establish that  
 14 removal is proper, see *Gaus*, 980 F.2d at 566. Because Defendant’s removal is improper,  
 15 specifically untimely under the one-year time limitation set forth in 28 U.S.C. § 1446(c)(1),  
 16 the Court grants Plaintiff’s motion to remand this action to state court.

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19  
 20 <sup>2</sup>Defendant briefly mentions in the background section of its opposition brief that  
 21 Manterola’s unopposed motion to dismiss “argu[ed] that she had no knowledge of  
 22 Plaintiff’s incident, that she was not an employee at the subject store, and that she was  
 23 not present at the time the incident occurred.” (ECF No. 7 at 3.) Defendant itself does not  
 frame such arguments as “facts” but has attached Manterola’s state court motion to  
 dismiss and her interrogatory responses and declaration on which those arguments were  
 made. (ECF No. 7-3.)

24 Even if the Court were to construe this as Defendant proffering evidence of  
 25 fraudulent joinder as to Manterola, the Court is not persuaded. First, the Court is skeptical  
 26 about why matters outside the pleadings were presented to the state court on an NRCP  
 27 12(b)(5) “failure to state a claim” motion in the first place. See NRCP 12(b)(5), 12(d).  
 28 Second, Plaintiff did not have knowledge of Manterola’s interrogatory responses and  
 declaration until about eight months after joining Manterola (ECF No. 7-3), and “a denial,  
 even a sworn denial, of allegations does not prove their falsity.” *Grancare*, 889 F.3d at  
 551 (discussing a declaration in the context of demonstrating fraudulent joinder).  
 Moreover, “[a] defendant is not a fraudulently joined or sham defendant simply because  
 the facts and law may further develop in a way that convinces the plaintiff to drop that  
 defendant.” *Padilla v. AT & T Corp.*, 697 F. Supp. 2d 1156, 1159 (C.D. Cal. 2009).

**IV. CONCLUSION**

The Court notes that the parties made several arguments and cited to several cases not discussed above. The Court has reviewed these arguments and cases and determines that they do not warrant discussion as they do not affect the outcome of the motion before the Court.

It is therefore ordered that Plaintiff Renee Brown's motion to remand to state court (ECF No. 6) is granted. This action is remanded to the Eighth Judicial District Court of Clark County, Nevada.

The Clerk of Court is directed to close this case.

DATED THIS 29<sup>th</sup> Day of March 2024.

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written over a horizontal line.

MIRANDA M. DU  
CHIEF UNITED STATES DISTRICT JUDGE